

In the United States Court of Federal Claims

No. 13-779 C
Filed: May 20, 2016

CILICIA A. DeMONS, *et al.*,

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

* 5 U.S.C. § 2105 (“Employee” defined for purposes of Title 5);
* 5 U.S.C. §§ 6301–6391 (Annual and Sick Leave, Other Paid Leave, Voluntary Transfers of Leave, Voluntary Leave Bank Program, Family and Medical Leave, and Leave Transfer in Disasters and Emergencies);
* 38 U.S.C. §§ 7454(b)(1), (b)(2) (Physician assistants and other health care professionals);
* RCFC 23(c)(2) (Class Action Notice).

MEMORANDUM OPINION AND ORDER APPROVING NOTICE OF A CLASS ACTION, AMENDING CLASS CERTIFICATION, AND APPOINTING CLASS ACTION ADMINISTRATOR

On April 29, 2016, Plaintiffs filed a Motion For Approval Of Notices To The Class, Approval Of Amendments To The Class Certifications To Reflect Consolidation Of The Cases, And To Appoint The Class Action Administrator. The Government objected.

On May 4, 2016, Plaintiffs filed an Unopposed Motion For Leave To Withdraw the April 29, 2016 Motion and substituted a new Joint Motion To Approve Notices To The Class, Approval Of Amendments To The Class Certifications To Reflect Consolidation Of The Cases, And To Appoint The Class Action Administrator. After consideration, the court grants Plaintiffs’ May 4, 2016 Unopposed Motion To Withdraw the April 29, 2016 Motion, however, the parties’ May 4, 2016 Joint Motion is denied.

The court, however, has determined that it is appropriate to certify two subclasses in this case:

DeMONS SUBCLASS ONE: All General Schedule employees, as defined by 5 U.S.C. § 2105, who were employed between July 1, 2012 and February 28, 2016 by the Department of Veterans Affairs (“VA”) in one of the following occupations:

1. Certified or Registered Respiratory Therapist, Licensed Physical Therapist, Licensed Practical Nurse (“LPN”), Licensed Vocational Nurse (“LVN”), Pharmacist, Occupational Therapist, Graduate Nurse or Nurse Pending Graduation by the Veterans Health Administration, Audiologist, Audiologist-Speech Pathologist, Speech Pathologist, Biomedical Engineer, Corrective Therapist or Kinesiotherapist, Dental Assistant, Dental Hygienist, Dietitian, Marriage and/or Family Therapist, Licensed Professional Mental

Health Counselor, Medical Instrument Technician, Medical Records Technician, Medical Support Assistant, Medical Technologist, Nuclear Medicine Technologist, Occupational Therapy Assistant, Orthotist or Orthotist-Prosthetist, Pharmacy Aid or Pharmacy Technician, Physical Therapy Assistant, Prosthetic Representative, Psychologist, Diagnostic Radiologic Technician or Technologist, Therapeutic Radiologic Technician or Technologist, Social Worker, Blind Rehabilitation Specialist or Blind Rehabilitation Outpatient Specialist, Medical Support Assistant, Nursing Assistant, Therapeutic Medical Physicist or Medical Physicist, and

- a. who regularly and customarily worked on a tour of duty any part of which was within the period beginning 6 p.m. and ending 6 a.m., and/or on a tour of duty any part of which was within 12:00 midnight Friday and ending 12:00 midnight Saturday (not including any Sunday hours); and
- b. who received night differential pay of 10% and/or Saturday premium pay of 25% or more, pursuant to 38 U.S.C. §§ 7454(b)(1), (b)(2), for each such hour of service between 6 p.m. and ending 6 a.m., and/or for each such hour of service between 12:00 midnight Friday and 12:00 midnight Saturday (not including any Sunday hours); and
- c. who received pay during periods of authorized paid leave, pursuant to 5 U.S.C. §§ 6301–6391, for any part of a tour of duty between 12:00 midnight Friday to 12:00 midnight Saturday (not including any Sunday hours) that was reduced in an amount equal to the Saturday premium pay to which such employees would have been entitled, if they performed regular and customary work on Saturdays instead of using authorized paid leave; and/or
- d. hybrid employees who were designated to receive premium pay on the same basis as nurses, who received pay during periods of authorized paid leave, pursuant to 5 U.S.C. §§ 6301–6391, for any part of such tours of duty between 6 p.m. and 6 a.m., that was reduced in an amount equal to the night differential pay that VA employees would have been entitled, if they performed regular and customary work at night, instead of using authorized paid leave.

DeMONS SUBCLASS TWO: All General Schedule employees, as defined by 5 U.S.C. § 2105, who were employed between July 1, 2012 and February 28, 2016 by the VA in one of the following occupations:

1. Series 0060 Chaplain; Series 0101 Social Science; Series 0102 Social Science Aid and Technician; Series 0181 Psychology Aid and Technician; Series 0184 Sociology; 0186 Social Services Aid and Assistant; Series 0187 Social Services; Series 0188, Recreation Specialist; Series 0189, Recreation Aid and Assistant; Series 0401, General Biological Science; Series 0403, Microbiology; Series 0404, Biological Science Technician; Series 0405, Pharmacology; Series 0413, Physiology; Series 0415, Toxicology; Series 0601, General Health Science; Series 0625, Autopsy Assistant; Series 0636, Rehabilitation Therapy Assistant (Except for Occupational Therapy Assistant and Physical Therapy Assistant); Series 0637, Manual Arts Therapist; Series 0638, Recreation/Creative Arts Therapist; Series 0639, Education Therapist; Series 0640, Health Aid and Technician (Except for Certified Respiratory

Therapist); Series 0645, Medical Technician; Series 0646, Pathology Technician; Series 0651, Respiratory Therapist; Series 0664, Restoration Technician; Series 0670, Health System Administration; Series 0671, Health System Specialist; Series 0673, Hospital Housekeeping Management; Series 0683, Dental Laboratory Aid and Technician; Series 0690, Industrial Hygienist; Series 0698, Environmental Health Aid and Technician; Series 0699, Student Nurse Technician (Title code 63 only); Series 0701, Veterinary Medical Science; Series 0704, Animal Health Technician; Series 1020, Medical Illustrator; Series 1060, Photographer (Medical); Series 1301, General Physical Science; Series 1306, Health Physics; Series 1310, Physics; Series 1311, Physical Science Technician; Series 1320, Chemistry; Series 1601, Biomedical Equipment Support Specialist; Series 1725, Public Health Educator; Series 1910, Quality Assurance; and

- a. who regularly and customarily worked on a tour of duty any part of which was within the period beginning 12:00 midnight Friday and ending 12:00 Saturday; and
- b. who received premium pay of 25% or more, pursuant to 38 U.S.C. § 7454(b)(3), for each such hour of service between 12:00 midnight Friday and 12:00 midnight Saturday; and
- c. who received pay during periods of authorized paid leave, pursuant to 5 U.S.C. §§ 6301–6391, for any part of a tour of duty from 12:00 midnight Friday to 12:00 midnight Saturday that was reduced in an amount equal to the Saturday premium pay, pursuant to 38 U.S.C. § 7454(b)(3), to which such employees would have been entitled, if they performed their regular and customary work on Saturdays, instead of using authorized paid leave.

The court also has determined that Epiq Systems Inc. is certified as Class Action Administrator (“Administrator”).

On or before July 1, 2016, the Administrator will provide a Summary Notice of the certification to each member of a subclass, designated herein, by Postcard, to last known addresses. The cost of the Postcard and mailing will be paid by Class Counsel. The Summary Notice will refer to www.myleavepay.com, a website operated and maintained by the Administrator. The website will post the court’s Official Notice, and a copy of the claim that a putative class member may file by Internet or mail to *DeMons* P.O. Box 4349, Portland, Oregon 97208-4349, no later than August 15, 2016.

The Government will provide the Administrator, in electronic form, with the names and addresses of putative class members who are or were employed by the VA in one of the occupations identified herein, to the extent such information is reasonably known and available. The Administrator and the Government will use their best efforts to identify a current address for any postcards that are returned as undeliverable.

All personal information provided by a class member on a claim in this case is subject to a Protective Order entered by the court on this date.

IT IS SO ORDERED.

s/ Susan G. Braden
SUSAN G. BRADEN
Judge